IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.94 OF 2006
a/w
Civil Application No.174 of 2006

Shiva Annu Ambi and anr. .. Appellants.
(Orig.Defts 1&2)

Vs

Maruti Pirappa Ambi .. Respondent
(Plaintiff)

Mr G.M.Savagave,for the appellants.

CORAM : D.B.BHOSALE,J.
DATED : 06th JULY, 2007

P.C.:

1. Heard the learned counsel for the appellants.

2. This second appeal is directed against concurrent findings recorded by the courts below by which a suit filed by the respondent-plaintiff for perpetual and mandatory injunction has been decreed keeping the rights of the appellants-defendants of right of way through the suit property intact. Mr. Savagave, learned counsel for the appellant, assailed the judgment contending that the defendants and the plaintiff were co-sharer in C.T.Survey no.179, which was formed in consolidation scheme. I perused the judgment of the appellate court and in particular paragraphs 18 and 19 where the appellate court has dealt with this ground of appeal. It reveals from the contents of these two paragraphs that an entry of the

names of the plaintiff and defendants in respect of C.T.Survey no.179 showing them as co-sharer has been deleted in the appeal filed by the plaintiff. It is not clear whether the said order passed in the appeal is carried further by the appellants. Mr.Savagave, submitted that the defendants have filed an independent suit bearing R.C.S no.282/81 seeking declaration that they have 1/3rd share in C.T.Survey no.179 and that the order of consolidation officer is null and void. That suit was dismissed by the trial Court and the appeal filed by the defendants is still pending. Keeping that all in view and considering the findings of facts recorded by the courts below and as I find sufficient material on record to sustain those findings, this second appeal is dismissed. It is open for the defendants to prosecute his appeal against the judgment and order in R.C.S.No.282/91, so also the appeal,if any, arising from the orders passed by the consolidation officer. The defendants can also seek appropriate reliefs in those proceedings. While expressing this, I shall not be understood to have expressed any opinion on the merits of those appeals and the court/authorities shall deal with the same in accordance with law. This appeal is disposed of. As a consequence thereof, the civil application is disposed of.

(D.B.BHOSALE,J.)